

## **REMARKS**

Claims 1, 27, 28 and 30-34 are now pending in the application, with claim 1 being an independent claim. Claim 1 is amended. No new matter is presented. Thus, in view of the above amendment and the following remarks, Applicants respectfully request the withdrawal of the rejections.

## **REJECTIONS UNDER 35 U.S.C. § 102 AND 35 U.S.C. § 103**

Claims 1, 27 and 30-32 are rejected under 35 U.S.C. § 102(e) as anticipated by U.S. 5,092,893 to Smith. Claims 28, 33 and 34 are rejected under 35 U.S.C. §(a) as obvious over Smith.

Applicants respectfully disagree with the rejections. Applicants submit that Smith does not teach “an artificial facet joint formed between the adjoining vertebral bodies by articulation of the artificial caudal facet joint structure with the artificial cephalad facet joint structure” as recited in independent claim 1. Smith teaches a vertebral implant comprising plates that are for “rigidly connecting vertebral bodies in axial and lateral directions,” with the goal being spinal fusion (emphasis added). See Col. 2, lines 5-7. Smith does not teach an artificial facet joint that is capable of articulation. Moreover, while Smith does teach “incremental” axial adjustments (as stated in the Office Action), this is not the equivalent of providing an articulating, artificial facet joint.

Nevertheless, Applicants have amended the application to better define the range of articulation, as recommended in the Office Action. In particular, claim 1 now recites “wherein the artificial caudal facet structure articulates with the artificial facet joint structure in the cephalad and caudal directions and provides medial/lateral angulation,” which is not disclosed in

the cited art. For example, there is no disclosure in Smith of any kind of angular articulation. Accordingly, Applicants respectfully submit that claim 1 is in condition for allowance.

As claims 27, 28 and 30-34 depend on claim 1, these claims are also in condition for allowance.

### **NO DISCLAIMERS OR DISAVOWELS**

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

### **CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned attorney at (610) 930-1800 x1172. No additional fees are believed due for this submission, however, if any additional fees are required; please charge such fees to GMEDELAWARE 2 LLC No. 50-4131.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Gregory Tse', with a stylized, cursive script.

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